



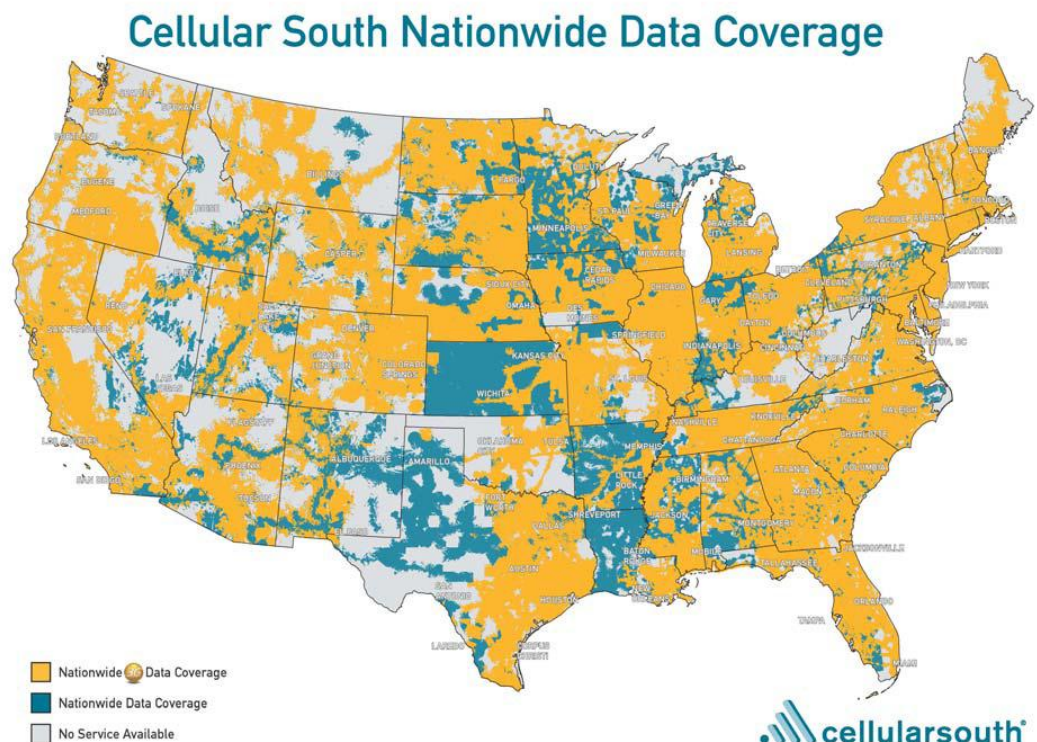
MANDATORY DATA ROAMING REQUIREMENT IS PROHIBITED BY SECTION 332 OF THE ACT AND NOT IN THE PUBLIC INTEREST

I. THE PROPOSED REGULATIONS WOULD VIOLATE THE SECTION 332 OF THE ACT

- Section 332 of the Act establishes two statutory categories of mobile wireless services: (1) CMRS services, which are defined as services that make available “interconnection” to the “public switched network” and are offered “to the public,” and (2) private mobile services, which are defined as any mobile wireless service that is not CMRS or its functional equivalent.
- Data roaming is not CMRS, does not make available interconnection to the PSTN, is an individually negotiated carrier-to-carrier service that is not offered indiscriminately to all comers, and is in no respect functionally equivalent to CMRS.
- The Act states “insofar as” a person provides a “service that is a private mobile service,” that person “shall not . . . be treated as a common carrier for *any purpose under this Act.*”
- Section 332(c)(2) thus flatly prohibits the proposed rules, which would force wireless broadband providers to offer data roaming to all comers and to provide such services on rates and terms governed by Sections 201 and 202.

II. FACTUAL AND POLICY CASE FOR COMMON CARRIER REGULATION IS EQUALLY MERITLESS

- Wireless carriers that have built data networks clearly have an incentive to enter into data roaming agreements on appropriate terms, and providers including AT&T, are offering roaming arrangements in the marketplace.
- Data roaming agreements are widely available and commonplace throughout the industry:
 - Cellular South asserted that it has been rebuffed “whenever an automatic roaming agreement has been requested.” However, their nationwide coverage map demonstrates that it has nationwide obtained 3G roaming and now advertises that its 3G network coverage is *better* than AT&T’s 3G coverage (see figure).



Actual wireless coverage may vary due to atmospheric conditions, customer equipment and/or system limitations. Map is a generalization intended for illustrative purposes. National coverage may depict licensed areas rather than an approximation of the coverage level. In areas that do not depict any particular type of coverage, users may find areas where they can use their mobile devices outdoors and in some vehicles. Authorization may be required to use your phone outside of the continental United States. Please call toll-free 1-877-330UTH (276-8441) for details. ©2010 Cellular South, Inc. All rights reserved.



- Leap filed reply comments stating that “the Commission cannot assume that carriers will reach data roaming agreements in the absence of a regulatory and enforcement framework.” Cricket Communications, Leap’s retail brand, announced that starting in October, they will have access to national 3G coverage through 3G data roaming agreements with 40 other carriers including Sprint.
- While Cincinnati Bell has complained to the FCC that they cannot obtain 3G roaming agreements, the coverage map on their website proves otherwise. They are providing 3G services via roaming agreements throughout the United States – including in cities where they hold spectrum licenses.
- The ability of carriers to obtain roaming agreements in the marketplace is only likely to increase with the ongoing deployment of technology.
- In the context of the rapidly evolving market for data services, carriers have the ability to leap frog competitors by deploying LTE technology regardless of their current network offerings. In fact, MetroPCS is leap-frogging 3G altogether and is investing heavily to build a 4G network, which it expects to deploy this year, and it recently announced that it will be the *first* carrier to offer a 4G LTE handset..

III. COMMON CARRIER REGULATION OF WIRELESS DATA ROAMING ARRANGEMENTS WOULD HARM CONSUMERS, REDUCE COMPETITION AND DISCOURAGE INVESTMENT

- As AT&T outlined in its opening comments, data roaming presents very different issues than voice roaming. As a result of innovation by wireless carriers and handset manufacturers, demand for these services is exploding.
- Even proponents of roaming regulation recognize the need for caution. As Clearwire puts it, neither carriers nor the Commission can “fully anticipate the issues that may arise with regard to data roaming.”
- Given exploding demand and spectrum and backhaul capacity constraints, it is critical that wireless carriers have flexibility to manage their networks.
- Wireless carriers have no control over the customers of roaming carriers and cannot directly dictate the data plans, services and options available to roamers that affect their demand for data. Nor do they know the historical usage pattern of roamers and options available to roamers, including applications, that affect their demand for data.
- As networks near or reach their capacity, even modest increases in demand degrade their reliability and speed.
- Further, it is not just the total demand that is relevant, but when and where that demand materializes. Unexpected demand that materializes at peak usage times can cause network congestion that the same level of demand would not at a different time of day.